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REMARKS

Independent claim 1 has been amended to more particularly claim the subject matter that the applicant regards as his invention. Among the amendments to that claim are several clarifying amendments, along with the introduction of the subject matter of claim 3, which has been canceled without prejudice or disclaimer. Additionally, new claim 7 has been added

Briefly, the present invention relates to an improved beverage packaging unit that is directed to providing a container that results in improved efficiency when transporting such containers, and to a container having improved hygiene when drinking from such containers. The transportation efficiency is achieved by making the side, top, and bottom walls of the container in rectangular form, to differentiate it over the more conventional cylindrical form. The invention serves to decrease transportation volume by permitting tighter packing of the containers, thereby eliminating void spaces between adjacent containers when they are placed in shipping cartons. The hygiene improvement is achieved by enabling drinking of beverages from the container without direct contact by the drinker's lips with an upwardly-facing container surface that has been exposed to the surroundings after filling and application of a closure element.

As amended, claim 1 more clearly recites the form of the container and also more specifically recites the form of the closure element, which completes the parallelepipedal form of the packaging unit when the closure element is applied to the tubular part that extends from a bevelled corner of the packaging unit. The structural features of the closure element and its spatial arrangement relative to

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the box-like body have been amplified for clarification, and the functional features of the invention have been recited in the further-amended form of independent claim 1.

Claims 1-4 and 6 were rejected as obvious based upon the combination of the Vlasaty et al. '015, the Fujimoto '629, and the Case '147 references. The primary Vlasaty et al. reference relates to a box-like container 10 having a triangular-shaped corner wall 21 from which a tubular part 24 extends to form a pouring spout 22. The tubular part 24 is threaded to receive a conventional circular screw cap that is completely removed in order to allow dispensing of the product from the container (see Vlasaty, et al., Figs. 11, 12, and 16; and col. 2, lines 46-51). It was acknowledged in the Action that the Vlasaty et al. reference "fails to teach the closure element being a generally pyramidal body, and also fails to teach the closure element having a cavity extending therethrough, which is rotated into alignment with an opening in the tubular part." And in addition, that reference also fails to teach or suggest a packaging unit in which the pyramidal closure element is retained on the tubular part of the box-like body when the packaging unit is opened to allow flow of beverage from the box-like body, and it also fails to teach or suggest that edges of the bottom surface of the closure element lie in respective planes in which the top and two adjacent sides of the box-like body lie to form a parallelepipedal packaging unit.

The Fujimoto reference was cited to show a container having a pyramid-shaped closure element. But as was the case with the Vlasaty, et al. reference, the Fujimoto reference also fails to teach the closure element having a cavity

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extending therethrough. And significantly, the Fujimoto reference also fails to teach or suggest that the closure element has a triangular surface that overlies a triangular surface at an upper corner of the container body, it fails to teach or suggest a tubular part that extends outwardly from the triangular surface of the container body, and it fails to teach or suggest that the closure is rotated so that a cavity within the closure element is brought into alignment with an opening in the tubular part to allow dispensing from an opening on an outer face of the closure element, as recited in claim 1.

Although superficially similar in external appearance, the closure element disclosed in the Fujimoto reference is significantly both structurally different and functionally different. Instead of a rotatable closure element that has a bottom surface that conforms in size and shape with a triangular surface at an upper corner of a box-like body and that engages a tubular part that extends outwardly from a triangular surface at a container body having a triangular bottom surface, the lid 220 shown in Fig. 8 of the Fujimoto reference includes clips 221a and 221b that extend into the corner opening portion 230 (see Fujimoto, Fig. 9) formed in carton 210. And lid 220 must be completely removed (see Fujimoto, col. 2, lines 14-15; and col. 8, lines 4-5) to expose a corner opening (see Fujimoto, Figs. 13-15) that is not formed on a tubular part that extends from a triangular surface at a corner of the container, as claimed, to allow the granular product to be dispensed from the container. Lid 220 is not rotated for dispensing the product, but must be removed in order to allow the product to be dispensed

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and to allow the lid to be used as a measuring cup (see Fujimoto, col. 1, lines 55-56; and col. 2, lines 15-18).

The Case reference was cited for disclosing a closure cap that is snap-connected to a collapsible tube and that includes "a cavity extending therethrough, which is axially rotated into alignment with an opening in the tubular part, in order to dispense the container products," as was noted in the Action. But the Case container is a collapsible tube, not a parallelepipedal beverage packaging unit as claimed, and it does not have a bevelled corner that includes a triangular surface. Nor is the Case closure element a pyramidal body having a bottom surface that conforms in size and shape with and that overlies a triangular surface at a corner of the container to form a parallelepiped with the container body, nor does the Case closure element have bottom surface edges that lie in respective planes in which a top and two adjacent sides of a box-like body lie, all as claimed in amended claim 1.

As pointed out above, none of the individual references that are relied upon shows or even suggests the structure as it is claimed in amended claim 1. In fact, each reference discloses an entirely different container and closure structure, each of which functions differently from that claimed herein. Additionally, the references contain no teachings or suggestions that would motivate one of ordinary skill in the art to attempt to combine them as the examiner has done, absent the present disclosure.

In connection with an obviousness assessment, it is not sufficient that individual references merely disclose individual elements or components that

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make up the claimed combination, because it is the specifically claimed combination of particular elements in a particular way, and not the mere existence of those elements in different references, that must suggest the invention.

Moreover, and in the context of combining teachings of particular references, the references cited and relied upon in this instance do not contain any hint as to how they could be combined to arrive at the invention as claimed. In that regard, it is not apparent which features of which reference are to be combined with which features of another reference, and which features of which reference are to be ignored or discarded in attempting to effect a structural and functional combination. There is no link between the references that would lead one having only ordinary skill in the art to combine them.

The only motivation for combining the references in the manner the examiner has done is the disclosure of the present application. But to use as a road map or as a template a disclosure by an inventor to assemble references that are directed to different problems and that teach different structures for different functions, and to arbitrarily select and combine particular individual parts of such references that allegedly can be combined to render obvious that which only an inventor has taught, is an improper hindsight reconstruction of the prior art while having an applicant's invention in mind. Additionally, it amounts to using against an inventor that which only he has taught. Thus, the invention as herein claimed is urged not to be obvious to one having only ordinary skill in the

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art, based upon the disclosures contained in the several references relied upon by the examiner.

The legal concept of prima facie obvious is expressed as follows in the MPEP:

To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. *Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences,"* conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, *impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.*

The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).
MPEP § 2142 (Emphasis added).

And regarding a possible rearrangement of parts, the MPEP states:

The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the reference device." *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).
MPEP § 2144.04 VI. C.

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Because of the considerable and significant structural and functional differences between the several references relied upon, one having only ordinary skill in the art would not be led to the individual references relied upon, nor would he be led by the references to even attempt to combine their disclosures as the examiner has done and without the guidance provided by the present disclosure that allows one, by hindsight, to pick and choose particular parts of particular references and to combine those particular parts in a particular way that is not disclosed nor suggested by any of the references. The references themselves contain no suggestion or motivation for one to combine them as the examiner has done. It is not enough that disclosures could hypothetically be combined in some particular way. The mere possibility of combination does not make obvious a specific combination of particular elements of the references. The fact that particular individual elements of a claimed invention are known or could be found scattered in several different references is by itself insufficient to establish a prima facie case of obviousness. In that regard, all inventions are combinations of old elements. As was stated by former Chief Judge Markey of the Federal Circuit, "virtually all inventions are 'combinations,' and...every invention is formed of 'old elements'....Only God works from nothing. Man must work with old elements." H.T. Markey, "Why Not the Statute?" 65 J. Pat. Off. Soc'y. 331, 333-34 (1983).

New claim 7 depends from claim 1 through claim 6 and further recites that the closed beverage packaging unit is parallelepipedal, and that it has planar top, bottom, and side walls defined by respective rectangular surfaces, and that its

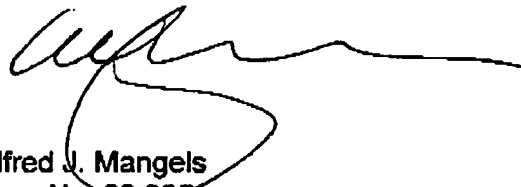
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outer surfaces are without outwardly extending projections. The Vlasaty et al. and Case references each show containers having outwardly extending projections 27 and 12, respectively.

Based upon the foregoing amendments and remarks, the claims as they now stand in the application are believed clearly to be in allowable form in that they patentably distinguish over the references that were relied upon, whether those references be considered in the context of 35 USC 102 or of 35 USC 103. Consequently, this application is believed to be in condition for allowance, and therefore reconsideration and reexamination of the application is respectfully requested with a view toward the issuance of an early Notice of Allowance.

The examiner is cordially invited to telephone the undersigned attorney if this amendment raises any questions, so that any such question can be quickly resolved in order that the present application can proceed toward allowance.

Respectfully submitted,



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